

State of California



Fair Political Practices Commission

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August 6, 1985

Melvyn W. Price
Supervising Deputy County Counsel
700 H Street, suite 2650
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-85-165

Dear Mr. Price:

Thank you for your letter requesting advice on behalf of Sacramento County Supervisor Ted Sheedy regarding his duties under the conflict of interest provisions of the Political Reform Act.^{1/}

Mr. Sheedy is employed part time as a commercial marketing representative at Sacramento Title Company. Mr. Sheedy's function is to contact, either in person or by telephone, major builders or developers in order to ask them if there is any possibility that they might do business with Sacramento Title. Mr. Sheedy is paid a salary in excess of \$250 per year for his services. He does not receive commission income.

You have presented 35 different fact situations which you indicated either have occurred or are likely to occur. You have asked whether any of these different fact situations would present a conflict of interest for Mr. Sheedy and require him to disqualify himself from participating in a decision of the Board of Supervisors.

It appears that the questions you have asked include hypothetical questions and questions relating to Mr. Sheedy's past conduct. As I stated in the April 5 letter, we are happy to provide advice with regard to specific fact situations which

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

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may affect Mr. Sheedy's ability to participate in specific decisions pending before the Board of Supervisors. However, our policy is to limit our advice to actual fact situations which may affect future governmental decisions. We do not provide advice regarding purely hypothetical situations or past conduct (see enclosed copy of 2 Cal. Adm. Code Section 18329(b)(8)). Accordingly, before we can answer your questions, we must ask you to revise your request for advice by limiting it to those questions which concern actual decisions pending before the Board of Supervisors. In your request, you should provide the material facts concerning the particular decisions pending before the Board of Supervisors, including information about the specific parties involved and their relationship to Sacramento Title Co.

We also note that Mr. Sheedy's employment with Sacramento Title Co. may create conflict of interest situations governed by Section 1090. As you know, we do not provide advice regarding Section 1090, but you may wish to consult the Attorney General's Office on this matter.

In your letter, you also requested clarification of that portion of Section 87100 which states:

No public official at any level of. . .local government shall make [or] participate in making. . . [of] a governmental decision in which he knows or has reason to know he has a financial interest.

Emphasis added.

Specifically, you want to know how Section 87100 applies to Section 81703(c), which provides that:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect. . . on:

* * *

(c) Any source of income, . . . aggregating . . . two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Before a violation of the conflict of interest provisions of the Political Reform Act may occur, Section 87100 requires that

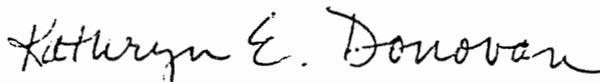
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an official "know or have reason to know" that he or she has a financial interest in a decision. Thus, under the provisions of Section 87103(c), if an official actually knows the identity of a source of income and knows that it is reasonably foreseeable that a decision will materially affect this source of income, the official must disqualify himself or herself.

Sections 87100 and 87103 also require disqualification if an official has reason to know that it is reasonably foreseeable that a decision will materially affect a source of his or her income. As a general rule, an official "has reason to know" that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would be likely to know the identity of the source of income and would be aware of the decision's probable impact on that source. An official engaged in a business which has numerous customers or clients is not ordinarily required to take affirmative steps to familiarize himself or herself with the identities of all sources of income to the business, nor to consult his or her sources of income to determine whether a decision will affect them.

As you can see, the question of whether an official "has reason to know" that a decision will affect a source of income depends on the specific facts of each situation. Therefore, until you provide us with more specific information, we can give you only very general advice.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:nwm
Enclosure



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July 22, 1985

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Re: Request for Conflict of Interest Opinion

Dear Ms. Milman:

By FPPC Advice Letter dated April 5, 1985 (your file No. A-85-076), your office confirmed the March 22, 1985 letter advice we rendered to Mr. Sheedy, a member of the Board of Supervisors of Sacramento County. In our letter, we opined that: (1) a title company employer of Supervisor Sheedy is a source of income to him and he is required to disqualify himself from participating in governmental decisions which would have a foreseeable material financial effect upon the title company; (2) those persons or entities who use the service of the title company are not a source of income to Supervisor Sheedy and he would not be required to disqualify himself from participating in decisions as to those users; with the exception that, if a decision would affect a user or client of a title company in such a way that it would have a foreseeable material financial effect upon the title company, then Supervisor Sheedy would be required to disqualify himself from participating in such a decision.

While the "nexus" test addressed in the FPPC letter described above is relevant, it is a test which is relevant in every instance. And, as the author of the FPPC letter, Ms. Donovan, acknowledged during my follow-up telephone conversation regarding the letter, no nexus problem is indicated in this particular instance.

Since Supervisor Sheedy's employment was prospective at the time the foregoing opinion was requested, that opinion was a generalized response to the inquiry and did not address specific factual situations. However, Mr. Sheedy has presently commenced the employment and specific factual situations have emerged. We are therefore pursuing the letter invitation of April 5, 1985 and seeking advice concerning specific situations confronting Mr. Sheedy. All of the facts below are either existing situations or contingencies which we know will arise based upon our past experience in matters of this kind.

Factual Background

Mr. Sheedy is a member of the Board of Supervisors of Sacramento County. Recently, Mr. Sheedy obtained part-time employment as a commercial marketing representative at Sacramento Title Company. The title company is a five-member partnership. The primary function of the title company is (1) to search and guarantee the record title by issuing insurance policies; and (2) to handle escrows. Mr. Sheedy's marketing representative position is one of several such public relations positions in the company. Mr. Sheedy does not receive any commissions from, nor does he have any ownership interest in, the title company. Rather, he is compensated on the basis of a straight salary which exceeds \$250 per annum. Mr. Sheedy's function is to contact, either in person or by telephone, major builders or developers in order to ask them if there is any possibility that they might do business with his title company employer. Generally, such inquiries would be directed to builders or developers of commercial properties. If Mr. Sheedy is successful in obtaining their business with respect to a particular property, Mr. Sheedy's name would be documented on the title company order form as the marketing representative. Such order forms indicate the location of the property and the service required (e.g., preliminary report, escrow, etc.). In addition to the foregoing, in the course of his employment, Mr. Sheedy will be expected to keep an eye out for prospective properties suiting the needs of clients or potential clients of the title company. In this way, builders or developers would be encouraged to use the services of the title company if any land transaction ultimately results as to the located properties. Finally, Mr. Sheedy may take orders for incidental services such as title searches or preparations of portfolios in the course of his employment.

Our questions concern disqualification requirements where a client or potential client of the title company is the subject of a decision by the Board of Supervisors. The relevant fact variations include the following:

A. Mr. Sheedy knows that X is a major client of the title company (i.e., the loss of X's business would exceed \$10,000 in a fiscal year).

B. Mr. Sheedy knows or has reason to believe that X is not now but will become a major client of the title company (i.e., do business of \$10,000 or more in a fiscal year).

C. Mr. Sheedy knows that while X is currently not a client of the title company, X was a major client in the prior fiscal year(s) (i.e., did business of \$10,000 or more).

D. It is known to Mr. Sheedy that X is a minor client of the title company (i.e., the loss of his business would be less than \$10,000).

E. It is known to Mr. Sheedy that X is a client, of the title company but he does not know if he is a major or minor client (i.e., whether the loss of X's business would be less or greater than \$10,000).

F. X is not a client of the title company but directs a substantial amount of business to the title company (i.e., directs more than \$10,000 worth of business per year).

G. It is unknown to Mr. Sheedy whether or not X is a client of the title company.

H. In his capacity as a marketing representative, Mr. Sheedy has obtained business for the title company from X.

I. Mr. Sheedy has never obtained business for the title company from X.

J. Mr. Sheedy has asked for or solicited business from X but has never obtained it on behalf of the title company.

K. X is an applicant before the Board of Supervisors on a rezoning matter affecting his real property.

L. Mr. Sheedy knows that approval of the rezoning matter is necessary in order for a real property sales transaction to go forward.

M. Mr. Sheedy knows that the transaction will go forward (or that no transaction is contemplated), without regard to the rezoning issue.

N. It is unknown to Mr. Sheedy that approval of the transaction is necessary for a real property transaction to go forward.

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O. Mr. Sheedy knows that if the title company obtains the business of the applicant with respect to the parcel which is the subject of the rezoning, it will have a material impact upon the revenues of the title company (i.e., the value of the business resulting would exceed \$10,000).

P. Mr. Sheedy knows that even if the title company obtains the business of the applicant with respect to the parcel which is the subject of the rezoning, it will not have a material financial impact upon the revenues of the title company (i.e., \$10,000).

Q. With respect to the parcel which is the subject of the rezoning, Mr. Sheedy does not know whether the value of the applicant's business to the title company would have a material financial effect upon the title company (i.e., he does not know whether it would increase the revenues in an amount of \$10,000 or more).

Our question is, will Mr. Sheedy be required to disqualify himself under any of the following factual combinations:

1. (a) A[I,K,N,Q]
(b) B[I,K,N,Q]
(c) C[I,K,N,Q]
(d) D[I,K,N,Q]
(e) E[I,K,N,Q]
(f) F[I,K,N,Q]
(g) G[I,K,N,Q]
2. (a) A[H,K,N]
(b) B[H,K,N]
(c) C[H,K,N]
(d) D[H,K,N]
(e) E[H,K,N]
(f) F[H,K,N]
3. (a) A[I,K,N]
(b) B[I,K,N]
(c) C[I,K,N]
(d) D[I,K,N]
(e) D[I,K,N]
(f) F[I,K,N]
4. (a) A[J,K,N]
(b) B[J,K,N]
(c) C[J,K,N]
(d) D[J,K,N]
(e) E[J,K,N]
(f) F[J,K,N]

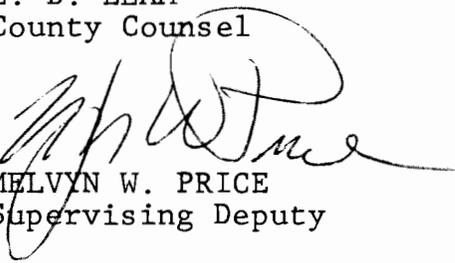
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- 5. (a) [A,I,K,L]O
(b) [A,I,K,L]P
(c) [A,I,K,L]Q
- 6. (a) [A,H,K,L]O
(b) [A,H,K,L]P
(c) [A,H,K,L]Q
- 7. (a) G,J,K,N
- 8. (a) [A,H,K,M]O
(b) [A,H,K,M]P
(c) [A,H,K,M]Q

Mr. Sheedy will be maintaining a complete segregation of his private employment from his public office. Additionally, it should be noted that, certain confidentiality requirements pertain to the title company business. As a consequence, Mr. Sheedy will not know nor have reason to know about many of the title company's clients or transactions; nor have reason to know about the business affairs of many of the applicants who appear before the Board of Supervisors on land use matters. Under these circumstances, we would appreciate some guidance or discussion of the term "know or have reason to know". That is, what obligation does a supervisor have to determine if an applicant before the Board is a client of the title company? And, what obligation does a supervisor have to determine, assuming he knows that an applicant before the Board is a client of the title company, if the decision by the Board will affect the client's need for the services of the title company?

Very truly yours,

L. B. ELAM
County Counsel

By 
MELVYN W. PRICE
Supervising Deputy

MWP:sd